

A **Arab-Malaysian Merchant Bank Bhd v
Dominance Resources Sdn Bhd & Anor**

HIGH COURT (SIBU) — SUIT NO 22-56 OF 2000
CLEMENT SKINNER J
6 APRIL 2001

B *Civil Procedure* — *Writ of summons* — *Indorsement* — *Statement of claim indorsed on writ* — *Whether separate indorsement of amount claimed required* — *Whether indorsement of year in which writ was issued, number and title of action on statement of claim necessary* — *Writ bore indorsement of firm of solicitors and business address, whether similar indorsement on statement of claim required* — *Rules of the High Court 1980 O 6 r 2(1)(b), O 18 r 6(1)(a), (b) & (4)*

C *Civil Procedure* — *Writ of summons* — *Service* — *Whether defendant must be served with sealed copy of writ*

D The plaintiff claimed against the first defendant for credit facilities granted to it and against the second defendant who stood as guarantor to those facilities. The plaintiff caused to be issued a writ of summons on which the plaintiff had indorsed its statement of claim, pleading the facts giving rise to the plaintiff's cause of action and praying for the relief sought. After the signature of the plaintiff's solicitors, there followed an indorsement to the effect that if the first and second defendants pay to the plaintiff or its solicitors within 20 days after the service of the writ the amount claimed and costs ('20 days costs indorsement'), further proceedings would be stayed. Immediately following the 20 days costs indorsement, there followed another indorsement showing which firm of solicitors had issued the writ on behalf of the plaintiff, and its business address within the jurisdiction.

E On being served, the first and second defendants applied for, and were granted, leave to enter conditional appearance so as to enable them to apply to set aside the writ as well as the service on the grounds that the writ was invalid, bad and/or ineffective and ought to be set aside for irregularity. The defendants filed separate applications. The issues for determination were: (i) whether the writ failed to comply with O 6 r 2(1)(b) of the Rules of the High Court 1980 ('the RHC') because there was no indorsement just before the 20 days costs indorsement of the amount claimed; (ii) whether the statement of claim indorsed on the writ did not comply with O 18 r 6(1)(a) and (b) of the RHC; (iii) whether the statement of claim did not comply with the provisions of O 18 r 6(4)(b) of the RHC; and (iv) whether a defendant must be served with a sealed copy of the writ.

Held, dismissing the first and second defendants' applications with costs:

I (1) Order 6 r 2(1)(b) of the RHC does not require a separate indorsement of the amount claimed if a statement of the amount claimed in respect of the debt or liquidated demand is already

contained or set out in the statement of claim and prayers indorsed on the writ because the statement of claim indorsed on the writ already served that purpose and, therefore, satisfies the requirement of O 6 r 2(1)(b) of the RHC (see p 720H–I).

- (2) The statement of claim had, in this case, been indorsed on the writ and had become part of the writ on which it was indorsed. In such a case, it was the face of the writ that would bear the year in which the writ in the action was issued, the number of the action as well as the title of the action. Thus, a statement of claim found indorsed on a writ having become part of the same, there is no requirement to herald it with the year in which the writ in the action is issued, the number of the action and the title of the action because all those particulars are already stated on the face of the writ on which the statement of claim is indorsed (see p 721E, H–I).
- (3) A statement of claim indorsed on a writ is not a pleading by itself and separate from the writ of summons. It is part of the writ on which it is indorsed. And since the writ already bore an indorsement as to the firm of solicitors who issued the writ and its business address, the provisions of O 18 r 6(4)(b) of the RHC will have no application the facts of this case. Those provisions only refer or apply to a statement of claim which is served as a pleading on its own (see p 722D–E).
- (4) There is no need to serve a sealed copy of the writ on a defendant. The rules and practice indicate the opposite of serving a sealed copy because when service of a writ is effected by way of personal service on a defendant, O 62 r 3(a) of the RHC requires that if a defendant so requests, he must be shown the sealed copy of the writ. If the defendant is to be served with a sealed copy of the writ, there would be no need for him to be shown, on request, the sealed copy. On issue of a writ, only two copies are sealed; one of which is retained by the registry as the original and the other sealed copy is returned to the plaintiff. If there were more than one defendant to be served, and if each defendant were required to be served with a sealed copy of the writ, it would be impossible to do so (see p 725E–G).

[Bahasa Malaysia summary

Plaintif telah menuntut terhadap defendan pertama kemudahan kewangan yang diberikan kepadanya dan terhadap defendan kedua yang menjadi penjamin kepada kemudahan tersebut. Plaintif telah menyebabkan dikeluarkan satu writ saman di mana plaintiff telah mengindorskan pernyataan tuntutan dengan memplikan fakta-fakta yang menimbulkan kausa tindakan plaintiff dan memohon relif. Selepas tandatangan peguambela plaintiff, satu indorsmen menyusul membawa kesan sekiranya defendan-defendan pertama dan kedua

- A membayar kepada plaintif atau peguambelanya dalam tempoh 20 hari selepas penyampaian writ tersebut jumlah yang dituntut dan kos ('indorsmen kos 20 hari'), prosiding seterusnya akan digantungkan. Sebaik sahaja selepas indorsmen kos 20 hari tersebut, terdapat satu lagi indorsmen yang menunjukkan firma peguambela yang mana telah mengeluarkan writ tersebut bagi pihak plaintif, dan alamat perniagaannya adalah dalam bidang kuasa. Setelah disampaikan, defendan-defendan pertama dan kedua telah memohon, dan diberikan, kebenaran untuk memasuki kehadiran bersyarat bagi membolehkan mereka memohon untuk mengetepikan writ tersebut dan juga penyampaian tersebut atas alasan-alasan bahawa writ tersebut adalah tidak sah, tidak baik dan/atau tidak berkesan dan patut diketepikan kerana luar aturan. Defendan-defendan telah memfailkan permohonan-permohonan berasingan. Persoalan-persoalan yang perlu ditentukan adalah: (i) sama ada writ tersebut gagal untuk mematuhi A 6 k 2(1)(b) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') kerana tidak terdapat apa-apa indorsmen sebaik sahaja sebelum jumlah yang menuntut untuk indorsmen kos 20 hari tersebut; (ii) sama ada pernyataan tuntutan yang diindorskan atas writ tersebut tidak mematuhi A 18 k 6(1)(a) dan (b) KMT; (iii) sama ada pernyataan tuntutan tersebut tidak mematuhi peruntukan A 18 k 6(4)(b) KMT; dan (iv) sama ada seorang defendan mesti disampaikan dengan satu salinan writ yang ditandatangani dan dimeteraikan.
- E **Diputuskan,** menolak permohonan-permohonan defendan-defendan pertama dan kedua dengan kos:
- F (1) Aturan 6 k 2(1)(b) KMT tidak memerlukan satu indorsmen yang berasingan tentang jumlah yang dituntut jika satu pernyataan tentang jumlah yang dituntut berhubung tuntutan hutang atau jumlah tak tertentu telahpun terkandung atau dinyatakan dalam pernyataan tuntutan dan permohonan-permohonan yang diindorskan atas writ tersebut, oleh kerana pernyataan tuntutan yang diindorskan atas writ telahpun memenuhi tujuan tersebut, dan maka, telahpun memenuhi kehendak A 6 k 2(1)(b) KMT (lihat ms 720H-I).
- G (2) Pernyataan tuntutan tersebut telah, dalam kes ini, diindorskan atas writ dan telah menjadi sebahagian daripada writ di mana ia telah diindorskan. Dalam keadaan begini, muka depan writ akan menunjukkan tahun writ dalam mana tindakan tersebut telah dikeluarkan, nombor tindakan dan juga tajuk tindakan. Oleh itu, satu pernyataan tuntutan yang telah diindorskan atas satu writ yang telah menjadi sebahagian daripada yang sama, tidak mempunyai apa-apa keperluan untuk menandakannya dengan tahun writ dalam mana tindakan tersebut telah dikeluarkan, nombor tindakan dan tajuk tindakan kerana semua butiran tersebut telahpun dinyatakan di muka depan writ di mana pernyataan tuntutan diindorskan (lihat ms 721E, H-I).
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- (3) Pernyataan tuntutan yang diindorskan atas writ bukan satu pliding dengan sendirinya dan berasingan daripada writ saman. Ia adalah sebahagian daripada writ di mana ia diindorskan. Dan memandangkan writ tersebut telahpun mempunyai satu pengindorsan tentang firma peguambela yang mengeluarkan writ tersebut dan alamat perniagaannya, peruntukan-peruntukan A 18 k 6(4)(b) KMT tidak terpakai kepada fakta-fakta kes ini. Peruntukan-peruntukan tersebut hanya merujuk atau terpakai kepada satu pernyataan tuntutan yang telah disampaikan sebagai satu pliding dengan sendirinya (lihat ms 722D–E).
- (4) Satu salinan writ yang ditandatangani dan dimeteraikan tidak perlu disampaikan ke atas seorang defendan. Kaedah-kaedah dan amalan menunjukkan sebaliknya tentang penyampaian satu salinan yang ditandatangani dan dimeteraikan kerana apabila penyampaian satu writ dilaksanakan melalui penyampaian ke diri ke atas seorang defendan, A 62 k 3(a) KMT menghendaki bahawa jika defendan tersebut memohon sedemikian, beliau mestilah ditunjukkan sesalinan writ yang ditandatangani dan dimeteraikan tersebut. Sekiranya sesalinan writ yang ditandatangani dan dimeteraikan tersebut akan disampaikan ke atas defendan, maka tidak perlu untuk ditunjukkan kepada beliau, atas permintaan, salinan yang ditandatangani dan dimeteraikan tersebut. Berhubung persoalan writ, hanya dua salinan ditandatangani dan dimeteraikan; salah satu akan disimpan oleh pendaftar sebagai yang asal dan salinan satu lagi yang ditandatangani dan dimeteraikan akan dikembalikan kepada plaintif. Sekiranya perlu disampaikan kepada lebih daripada seorang defendan, dan jika setiap defendan dikehendaki untuk disampaikan dengan sesalinan writ yang ditandatangani dan dimeteraikan, ia tidak mungkin berlaku (lihat ms 725E–G).]

Notes

For cases on indorsement on a writ of summons, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6582–6588.

For cases on service of a writ of summons, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6618–6627.

Legislation referred to

Rules of the High Court 1980 O 1 r 7, O 6 rr 1, 2(1)(a), (b), 6(2), (3), (4), O 10 r 1, O 18 r 6(1)(a), (b), (4)(a), (b), O 62 r 3(a), O 92 r 2
Rules of the Supreme Court [UK] O 10 r 1(6)

Yong Sie Mee (Goh & Partners) for the plaintiff.

Idris Abdullah (Idris & Co) for the first and second defendants.

Clement Skinner J.: The plaintiff, a licensed merchant bank, granted credit facilities to the first defendant company, while the second defendant stood as guarantor to those facilities. On various dates in January 2000, the

A plaintiff demanded repayment from the first defendant of all outstanding sums due to it and, on various dates in March 2000, also demanded payment from the second defendant under the two guarantees that he had signed. The defendants having failed to comply with the demands made on them, the plaintiff commenced this action on 22 May 2000.

B To do so, the plaintiff caused to be issued out of the Registry of the High Court of Sabah and Sarawak at Sibu, a writ of summons on which the plaintiff had indorsed its statement of claim. The indorsement is heralded by the words 'statement of claim', and the facts giving rise to the plaintiff's cause of action against the first and second defendants are pleaded in ten numbered paragraphs, and ends in a prayer which reads as follows:

C AND the plaintiff claims against the first and second defendants:

- (a) the sum of RM3,793,296.78 as stated in para 4 hereinabove;
- (b) interest on the principal sum of RM3,745,000 at the rate of 9.5%pa calculated from 25 January 2000 until full and final payment;
- (c) fixed costs;
- D** (d) costs on solicitor-client basis; and
- (e) such further or other relief as the court deems appropriate.

E The plaintiff's advocates subscribed their signature at the bottom of the prayers to the statement of claim, and immediately thereafter, there followed an indorsement to the effect that if the first and second defendants pay to the plaintiff or its advocates within 20 days after the service of the writ the amount claimed and costs (which the plaintiff had indicated as RM125), further proceedings would be stayed. I shall refer to this indorsement as the '20 days costs indorsement'.

F Immediately following the 20 days costs indorsement, there followed another indorsement showing which firm of advocates had issued the writ on behalf of the plaintiff, and its business address within the jurisdiction. For completeness, I should also mention that the writ contained the usual indorsement as to service (which was left blank).

G On being served, the first and second defendants applied for, and were granted, leave to enter conditional appearance so as to enable them to apply to set aside the writ herein as well as the service thereof. To do so, each defendant filed separate applications. This is the hearing of those applications.

H Encik Idris Abdullah of counsel for the defendants, indicated that as both applications raised common issues, he would address the court on the second defendant's application only, and adopt all his arguments made on it for the first defendant's application.

I The second defendant seeks to set aside the writ on the grounds that it is invalid, bad and/or ineffective and ought to be set aside for irregularity. He gives four reasons for saying so. The second defendant goes on to argue that if the writ is irregular, the service thereof must also be set aside.

The first reason given by the second defendant for saying that the writ is irregular was that it failed to comply with O 6 r 2(1)(b) of the Rules of the

High Court 1980 ('the RHC'). That subrule requires that where the claim made by the plaintiff is for a debt or liquidated demand only, the plaintiff must, before issuing the writ, indorse it with a statement of the amount claimed in respect of the debt or demand.

It is the complaint of the second defendant that the plaintiff's claim herein is for a debt or liquidated demand only but the plaintiff had failed, in breach of O 6 r 2(1)(b) of the RHC, to indorse the writ with a statement of the amount claimed in respect of the debt or demand.

It is quite evident in this case that the plaintiff had exercised its right under O 6 r 2(1)(b) of the RHC to indorse the writ with a statement of its claim, and a reading of that indorsement shows that it is a full and proper pleading wherein there are set out all the material facts giving rise to the plaintiff's claim, such as, the nature and amount of the credit facilities offered to the first defendant, the dates of the offer and its acceptance, the mode of the offer, what rates of interest were to be charged, the dates on which the second defendant executed the guarantees and indemnities, and the dates and mode of demand made on the first and second defendants prior to the commencement of this action. In particular, para 5 of the plaintiff's statement of claim states that as at 25 January 2000, the total amount owing by the first defendant including interest amounted to RM3,793,296.78.

I had also, in setting out the facts of the case, taken some pains to describe what is stated in the prayers to the statement of claim. From the submissions made by counsel for the second defendant, it is evident that even though the statement of claim, as well as its prayer, contains a statement of the amount claimed from the defendants in respect of the debt or liquidated demand, the second defendant nevertheless expects the plaintiff to make another indorsement on the writ to the effect that it is claiming the amount of RM3,793,296.78 from the first and second defendants, just because the plaintiff's claim is for a debt or liquidated demand. When I enquired from counsel for the second defendant where this indorsement should appear and in what terms, his answer was 'just before the 20 days costs indorsement', and in the following terms, 'The plaintiff's claim is for the sum of RM3,793,296.78.' To me, that amounts to nothing more than repeating what is already stated in the statement of claim and its prayer.

The question is, does O 6 r 2(1)(b) of the RHC require the plaintiff to do so in a case such as this, where a statement of the amount claimed in respect of the debt or liquidated demand is already contained or set out in the statement of claim and prayers indorsed on the writ? In my judgment, r 2(1)(b) does not require a separate indorsement because the statement of claim indorsed on the writ already served that purpose and, therefore, satisfies the requirements of O 6 r 2(1)(b) of the RHC. To hold otherwise would only mean that the rules were being adhered to slavishly as it serves no purpose to repeat in a separate indorsement what is already found indorsed on the same writ. In support of what I say, I would refer to the following passage found in *Atkin's Court Forms* (2nd Ed, 1991 Issue) Vol 41

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- A at p 372, para 18 under the heading: '*Indorsement of claim for debt or liquidated demand only*':

Where the claim made by the plaintiff is for a debt or liquidated demand only, ie without any other claim being added, the writ must be indorsed before it is issued with a statement of the amount claimed in respect of the debt or demand. *The indorsement will ordinarily take the form of a statement of claim*, and, therefore, the cause of action giving rise to the debt or demand must be sufficiently, though concisely pleaded, with particulars, stating the date when payment was due. (Emphasis added).

- I accordingly reject the second defendant's complaint that the plaintiff's writ did not comply with O 6 r 2(1)(b) of the RHC.

The second reason given by the second defendant for saying that the writ is irregular was because the statement of claim indorsed on the writ did not comply with O 18 r 6(1)(a) and (b) of the RHC which reads:

Every pleading in an action must bear on its face —

- (a) the year in which the writ in the action was issued and the number of the action;
(b) the title of the action; and
(c) the description of the pleading.

It is the complaint of the second defendant that the statement of claim indorsed on the writ does not bear the year in which the writ in the action was issued, the number of the action and the title of the action. I am not surprised. The statement of claim has, in this case, been indorsed on the writ and has become part of the writ on which it is indorsed. In such a case, it is the face of the writ that will bear the year in which the writ in the action was issued, the number of the action as well as the title of the action.

In my judgment, the particulars stated in O 18 r 6(1)(a) and (b) of the RHC would need to be stated on the face of a statement of claim only in those instances where a plaintiff has chosen to issue and serve a generally indorsed writ, in which event, the rules require that he must serve on the defendant a statement of claim as a pleading. In support of what I have said regarding a statement of claim becoming a part of the writ on which it is indorsed, I would again refer to *Atkin's Court Forms* (2nd Ed, 1991 Issue) Vol 41 at p 372, para 17 under the heading '*Indorsement with Statement of Claim*' where it is stated:

A statement of claim indorsed on a writ is a pleading as well as a writ. It may therefore be amended once without leave, and as it is also part of the writ on which it is indorsed and is served as part of the writ, it may be served at any hour of the day or night.

Thus, a statement of claim found indorsed on a writ having become part of the same, there is, in my view, no requirement to herald it with the year in which the writ in the action was issued, the number of the action and the title of the action because all those particulars are already stated on the face of the writ on which the statement of claim is indorsed.

I accordingly find that the second defendant's complaint against the statement of claim based on O 18 r 6(1)(a) and (b) of the RHC to be untenable.

The third reason given by the second defendant for saying that the writ is irregular was that the statement of claim indorsed on the writ did not comply with the provisions of O 18 r 6(4)(b) of the RHC which states that:

Every pleading of a party must be indorsed —

(a) ...

(b) ..., with the name or firm and business address of the solicitor by whom it was served.

It is the contention of the second defendant that the statement of claim indorsed on the writ is a pleading by itself, and separate from the writ of summon, and therefore must bear an indorsement of the name of the firm of solicitors who served the statement of claim and their business address. With respect, I do not think counsel for the second defendant is correct in his contention. In the first place, for the reasons already given above, a statement of claim indorsed on a writ is not a 'pleading by itself and separate from the writ of summons', as contended by counsel. While it is a pleading as well as a writ, it is part of the writ on which it is indorsed. And since the writ already bore an indorsement as to the firm of solicitors who issued the writ and its business address, the provisions of O 18 r 6(4)(b) of the RHC will have no application to the facts of this case. In my judgment, those provisions only refer or apply to a statement of claim which is served as a pleading on its own.

Since I have ruled against the second defendant on all the three complaints he has raised on the regularity of the writ, I have not found it necessary to address the submission made to me on the interpretation that should be placed on the word 'must' found in O 6 r 2(1)(a) and (b), O 18 r 6(4)(a) and (b) of the RHC.

With that, I turn to consider the fourth complaint raised by the second defendant, which is that he was served with an 'unsealed' copy of the writ. According to the second defendant, he must be served with a sealed copy of the writ. The second defendant puts his argument this way: 'O 10 r 1 of the RHC requires that 'a writ must be served personally ...'. According to counsel, the 'writ' referred to in the aforementioned rule can only mean a writ of summons that is issued out of the Registry of the High Court pursuant to O 6 r 6(3) of the RHC, which describes what the registrar does when a plaintiff wishes to issue a writ and presents it for sealing. Order 6 r 6(3) of the RHC reads as follows:

The registrar shall assign a serial number to the writ and shall sign, seal and date the writ whereupon the writ shall be deemed to be issued.

So, the second defendant contends that as a writ is only issued upon its being signed, sealed and dated by the registrar, the copy of the writ that was served on him should have been a sealed copy. In his affidavit of 17 July 2000, the second defendant exhibited as 'L1' the writ that was served on

- A him, and counsel for the second defendant pointed out that it did not bear any seal of the court. However, a perusal of the exhibited writ shows that at the top left corner of the face of the writ, there appears the letters 'LS' enclosed in a circle.

- B Mr Yong Sie Mee, counsel for the plaintiff, says that the writ that was served on the defendant was duly issued out of the registry of this High Court, and the writ that was served on the second defendant was a copy that had been returned to the plaintiff's solicitors by the registry and bore on its face the letters 'LS' in a circle, which letters had been stamped onto the face of the writ by the registry, as is the practice in the High Court in Sabah and Sarawak. Mr Yong also drew my attention to the practice of the Registry of
- C the High Court in Sabah and Sarawak in sealing writs upon their being presented for issue. According to Mr Yong, the registry embosses the seal of the court on two copies of the writ only — all other copies of the writ, including the copy to be served on a defendant do not bear any seal of the court but will bear on its face the letters 'LS' in a circle, which is stamped onto the writ by the registry. Accordingly, Mr Yong says that the second
- D defendant's insistence on being served with a sealed copy of the writ is without any basis.

- E So, the question that arises for determination is, must a defendant be served with a sealed copy of the writ? To answer that question, it will be necessary to look at the procedure involved in the issuance of a writ, the practice of the registry in respect thereof, and the rules governing the service of a writ.

- F Order 6 r 1 of the RHC requires that every writ must be in Forms 2 or 3, whichever is applicable, and these forms must be used with such variations as the circumstances of the particular case require (see O 1 r 7 of the RHC). For present purposes, when Forms 2 and 3 are referred to, it will be noticed that the word '(seal)' is found in brackets at the top left side of the form. That to me indicates where the seal of the court is to be affixed to or embossed or impressed on the writ.

- G What the plaintiff has to do to obtain the issuance of a writ, what takes place on the issuance of the same and how many copies of the writ must be presented for issuance are provided for in O 6 r 6(2), (3) and (4) of the RHC which reads as follows:

- H (2) A plaintiff or his solicitor must, on presenting a writ for sealing, leave with the registrar the original and a copy together with as many copies thereof as there are defendants to be served.
- (3) The registrar shall assign a serial number to the writ and shall sign, seal and date the writ whereupon the writ shall be deemed to be issued.
- (4) The original writ must be filed in the registry and an entry thereof made in the cause book.

- I From the above provisions, it will be seen that:

- (i) the words 'leave with the registrar the original and a copy together with as many copies thereof as there are defendants to be served'

indicate that the number of copies of the writ which should be prepared for issue is two plus one copy for each defendant to be served;

- (ii) the writ is deemed to be issued once the registrar assigns a serial number to the writ and has signed, sealed and dated the same;
- (iii) the original writ is always retained and filed in the registry, and it is therefore the copy, and as many other copies as there are defendants to be served that are returned to the plaintiff;
- (iv) the assigning of a number to the writ, and the signing, sealing and dating thereof are all official acts of the registrar.

Now, a reading of the provisions of O 6 r 6(2), (3) and (4) of the RHC gives no indication as to how many copies of the writ that are presented for issue are sealed with the seal of the court. In so far as the seal of the court is concerned, O 92 r 2 of the RHC states that every document issued by the registry for which a form marked with the word 'seal', as prescribed in Appendix A must bear the seal of the court, and the words 'every document' would include a writ. However, as all practitioners will know, not every writ issued by the registry is embossed or impressed with the seal of the court. This is where the practice of the Registry of the High Court in Sabah and Sarawak becomes relevant. It is the practice of this registry that upon presentation, the seal of the court will be embossed upon or impressed onto two writs only. Of the two writs bearing the seal of the court, one is treated by the registry as the original and retained in the court file. The other sealed copy of the writ is returned to the plaintiff, and no matter how many other copies of the writ are presented for issue for purposes of service on each defendant, it is not the practice of the registry to seal each of them: instead, the registry will stamp on the top left face of each copy of such writ the letters 'LS' in a circle and return them to the plaintiff.

The practice of stamping the letters 'LS' in a circle onto a writ by the registry is carried out in accordance with Practice Note No 1 of 1980, issued by the registrar of the then High Court in Borneo, which in its material parts read:

Rules of the High Court 1980

The Chief Justice directs that when the Rules of the High Court, 1980 come into force on 1 June 1980, the Forms appended to the Rules are to be used as guides with such variations as circumstances may require.

- 2 With this in mind and with a view to standardization, the following variations are to be made:

- (i) ...
- (ii) ...
- (iii) In all the Forms, where it is marked for the seal the letters in LS in a circle should appear, thus LS. It is to be noted that the seal is at the top in a Form initiating action. In the other Forms, it is at the bottom.

- A (iv) ...
(v) ...
(vi) ...
- B (vii) ...
Kuching: 17 May 1980
Sgd: (Steve LK Shim)
Registrar.
- C The letters 'LS' are the initials for the latin words *Locus Sigilli*, which are defined in *LB Curzon's Dictionary of Law* (4th Ed) at p 232 as:
Place of the seal. 'LS' may be used in a document to show where the seal should be. See *First National Securities Ltd v Jones* [1978] 2 All ER 21.
- D Since there is a mark for the seal in Forms 2 and 3, the direction contained in Practice Note No 1 of 1980 obviously obviates the necessity for the seal of the court to be affixed to each and every copy of the writ that is issued out of the registry; the letters 'LS' in a circle instead appear in place of the court's seal and indicate to anyone receiving a writ imprinted with such letters where the seal should be.
- E So, when a writ is served, is the defendant to be served with a sealed copy of the writ, or is the service of a copy writ marked with the letters 'LS' in a circle sufficient? In my judgment, there is no need to serve a sealed copy of the writ on a defendant. I say so for the following reasons. There is nothing in the rules to indicate that it is a sealed copy of the writ that is served on a defendant. Instead, the rules and practice indicate the opposite because:
- F (i) When service of a writ is effected by way of personal service on a defendant, O 62 r 3(a) of the RHC requires that if a defendant so requests, he must be shown the sealed copy of the writ. If the defendant is to be served with a sealed copy of the writ, there would be no need for him to be shown, on request, the sealed copy.
- G (ii) On issue of a writ, only two copies are sealed; one of which is retained by the registry as the original and the other sealed copy is returned to the plaintiff. If there were more than one defendant to be served, and if each defendant were required to be served with a sealed copy of the writ, it would be impossible to do so.
- H (iii) It is the sealed copy of the writ which is returned to the plaintiff that is shown to a defendant if, on being served, he should insist on being shown a sealed copy of the writ. If that sealed copy is to be served on the defendant, the plaintiff would not have a sealed copy left to show to another defendant who, on being served, can insist on being shown a sealed copy of the writ.
- I

Before leaving this subject, I should point out that our practice, under O 62 r 3(a) of the RHC, of not serving a defendant with a sealed copy of the writ,

but showing to him at the time of service, if he should request it, a sealed copy thereof, is markedly different from the practice in England, where a defendant is served with a sealed copy of the writ. This is so because O 10 r 1(6) of the English Rules of the Supreme Court expressly provides that:

Every copy of a writ for service on a defendant shall be sealed with the seal of the office of the Supreme Court out of which the writ is issued and shall be accompanied by a form of acknowledgment of service in Form No 14 ...

In the result, there are no reasons to set aside the writ or the service thereof on the grounds relied upon by the second defendant. What I have just said will apply equally to the first defendant as it relies on the same grounds (except for the fourth ground) and arguments as the second defendant. Before I conclude, I wish to say that the first defendant did, in its affidavit, say that the service of the writ on it by leaving the same at No 153, 2nd floor, Jalan Kampong Nyabor, Sibu, Sarawak was bad in law but counsel for the first defendant did not address me at all on this point and I must therefore take it to have been abandoned. Counsel for the second defendant had also, in his written submissions, complained that whereas the second defendant had made several positive averments in his affidavits, filed in support of his application, and in reply to the affidavits filed by the plaintiff, the plaintiff had merely denied generally the averments made by the second defendant, and must therefore be deemed to have admitted all the averments made by the second defendant in his affidavits.

I regret I do not agree with this submission. The averments made by the second defendant on his complaints regarding the plaintiff's non-compliance with O 6 r 2(1)(a) and (b), O 18 r 6(1) and r (4)(b) of the RHC merely state that the plaintiff had failed to comply with the above mentioned rules. The second defendant did not even say why the plaintiff had not complied with those rules. Yet, the second defendant complains that the plaintiff had merely denied generally his averments. I do not see what else or how else the plaintiff could have denied or replied to the general averments of the second defendant.

The first and second defendants' applications are dismissed with costs.

The first and second defendants' applications dismissed with costs.

Reported by Moy Saw Han